

LON PHILPOTT
(On Reconsideration)

IBLA 73-200 Decided August 6, 1974

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting final proof for homestead entry and canceling claim.

Remanded.

Alaska: Homesteads—Homesteads (Ordinary): Cultivation —Homesteads (Ordinary):
Final Proof—Rules of Practice: Reconsideration

Where a homestead final proof has been finally rejected because the proof shows on its face that the claimant has not complied to any substantial extent with the cultivation requirements of the law, but the claimant subsequently alleges that he did in fact accomplish far more cultivation than was indicated by the final proof, and offers evidence in support of this allegation, the case will be remanded to allow the claimant another opportunity to file an acceptable final proof which will be subject to verification by field examination and inquiry.

APPEARANCES: Max F. Gruenberg, Jr., Esq., Gruenberg and Willard, Anchorage, Alaska, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lon Philpott has petitioned for reconsideration of the decision of this Board which held, inter alia, that the Alaska State Office had properly found that Philpott's final proof showed on its face that he had not satisfied the cultivation requirements of the homestead law and was subject to rejection for that reason. Lon Philpott, 13 IBLA 332 (1973). At the time of his appeal Philpott alleged merely

that he had cultivated one acre as a garden the first entry year and two acres each succeeding year except for 1971 when he said he had 18 additional acres in "grazing grass." The statutory five-year term of the claim expired on March 30, 1971, which contributed to the doubt concerning his effective cultivation of land during the portion of 1971 when the homestead claim was viable. As the claim embraced 160 acres, he was required to cultivate 10 acres during the second entry year and 20 acres each year thereafter until submission of final proof.

Upon petition for reconsideration of this Board's decision Philpott alleges that he in fact accomplished the following cultivation:

<u>Entry Year</u>	<u>Cultivation</u>
1st (4/1/66 to 4/1/67) -	one acre
2nd (4/1/67 to 3/31/68) -	5-1/2 a.
3rd (4/1/68 to 3/31/69) -	6-1/2 a.
4th (4/1/69 to 3/31/70) -	10-1/2 a.
5th (4/1/70 to 3/31/71) -	19-1/2 a.
<u>End of Statutory Life of Entry</u>	
1971 (calendar) -	19-1/2 a.
1972 (calendar) -	amt. not reported

After the first year two acres were allegedly devoted to garden crops while the balance of the reported acreage was in non-native cultivated oats.

The petition also alleges, as basis for reduction of cultivation, that he suffered serious physical ailments and encountered soil conditions in the course of cultivation which he could not have foreseen.

With his petition for reconsideration Philpott has submitted several affidavits by various parties, which tend to support his allegations, although this evidence cannot be regarded as conclusive proof of the facts alleged.

Accordingly, appellant will, once again, be accorded an opportunity to file an accurate and proper final proof. If, as it now appears, he has performed less than the requisite cultivation to entitle him to receive a patent to the entire 160 acres, he will be allowed to relinquish a part of the homestead claim and retain an area proportionate to his actual cultivation. Failure to file a final proof which is acceptable on this basis within the time to be specified by the Alaska State Office will result in cancellation of the claim. All aspects of legal compliance shown by the final proof shall be subject to verification by field examination and inquiry by the Bureau, and any discrepancy discovered may result in the initiation of a contest action to cancel the homestead claim in its entirety.

As an alternative to the re-filing of his final proof, Philpott may apply for a patent to five acres under the Homestead Act of May 26, 1934, 43 U.S.C. § 687a-1 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded to the Alaska State Office, Bureau of Land Management, for further action consistent with this decision.

Edward W. Stuebing
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

